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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THOMAS ZIRKIN, individually,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, an Illinois
Corporation; and USAA GENERAL
INDEMNITY COMPANY; a Texas
Corporation,

Defendants.

Case No. 2:22-cv-01627-JCM-DJA

**STIPULATION AND ORDER TO DENY
USAA GIC'S MOTION TO DISMISS
(Doc. 5) AND STATE FARM'S
JOINDER (Doc. 9) AS MOOT**

This Stipulation and Order to Deny USAA GIC's Motion to Dismiss Plaintiff's Second Cause of Action and State Farm's Joinder as Moot (hereinafter "Stipulation") is entered into by Plaintiff, Thomas Zirkon ("Plaintiff"), and Defendant, USAA General Indemnity Company ("USAA GIC"), and Defendant, State Farm Mutual Automobile Insurance Company ("State Farm") (collectively referred to as the "Parties").

On September 30, 2022, Defendant USAA GIC filed its Motion to Dismiss Plaintiff's Second Cause of Action and Motion to Strike Plaintiff's Request for Attorney's Fees (Doc. 5). The Motion requested the Court dismiss Plaintiff's tortious breach of the covenant of good faith and fair dealing ("bad faith") cause of action and strike Plaintiff's request for attorney's fees.

On October 10, 2022, Defendant State Farm Mutual Automobile Insurance Company filed a Joinder to USAA GIC's Motion to Dismiss Plaintiff's Second Cause of Action and Motion to Strike Plaintiff's Request for Attorney's Fees (Doc. No. 9).

1 On October 17, 2022, Plaintiff Zirkin filed his Response to Defendant USAA GIC's
2 Motion to Dismiss/Strike Attorneys Fees (Doc. 15). Plaintiff stated, in essence, that he would
3 be filing an amended complaint, which eliminated the second cause of action for bad faith,
4 thereby rendering the Motion/Joinder moot. Also on October 17, 2022, Plaintiff filed his First
5 Amended Complaint (Doc. 14). The First Amended Complaint removed Plaintiff's second
6 cause of action for bad faith, making the action solely a UIM breach of contract case. The First
7 Amended Complaint, therefore, renders the Motion to Dismiss (Doc. 5) and the Joinder to the
8 Motion to Dismiss (Doc. 9) moot. *See e.g., Barnes v. District of Columbia*, 42 F. Supp. 3d 111,
9 117 (D.D.C. 2014)("[w]hen a plaintiff files an amended complaint as a right . . . the amended
10 complaint becomes the operative pleading . . . any pending motion to dismiss becomes moot.")

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Accordingly, the parties stipulate that the Motion to Dismiss (Doc. 5)/Joinder (Doc. 9) should be denied as “moot.”

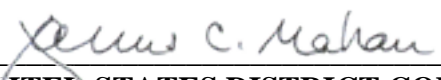
IT IS SO STIPULATED.

<p>Dated October 21, 2022</p> <p>HALL JAFFE & CLAYTON, LLP</p> <p><i>/s/ Riley A. Clayton</i></p> <p>_____ RILEY A. CLAYTON Nevada Bar No. 005260 7425 Peak Drive Las Vegas, Nevada 89128 Attorneys for Defendant, State Farm Mutual Automobile Insurance Company</p>	<p>Dated October 21, 2022</p> <p>THE MEDRALA LAW FIRM, PROF. LLC</p> <p><i>/s/ Jakub P. Medrala</i></p> <p>_____ JAKUB P. MEDRALA Nevada Bar No. 12822 615 S. 6th Street Las Vegas, NV 89101 Attorneys for Plaintiff</p>
<p>Dated October 21, 2022</p> <p>SPENCER FANE LLP</p> <p><i>/s/ Mary E. Bacon</i></p> <p>_____ MARY E. BACON Nevada Bar No. 12686 300 S. Fourth Street, Suite 950 Las Vegas, Nevada 89101 Attorneys for Defendant, USAA General Indemnity Company</p>	

ORDER

IT IS SO ORDERED.

Dated: October 27, 2022



UNITED STATES DISTRICT COURT JUDGE